

April 15, 2021

James Han

Planner | Planning Division | PBCE

City of San José | 200 E. Santa Clara St. 3rd Floor San José, CA 95113

RE: ALUC comments on Overrule findings proposed by the City San Jose for the Downtown West General Plan Amendment and Rezoning (City of San Jose file numbers GP19-009, PDC19-039), affecting lands within the San Jose International Airport Influence Area (AIA).

Dear Mr. Han:

The ALUC considered the City's proposed overrule of Downtown West General Plan Amendment and Rezoning at its March 24, 2021 meeting and concluded that the proposed overrule is not consistent with the purposes of Article 3.5 of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, sections 21670 through 21679.5, which are to protect public health, safety and welfare by, among other things, ensuring the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses. The specific reasons for the ALUC's determination are provided below.

In general, the ALUC finds that the overrule findings made by the City of San Jose are insufficient and not factual, as well as inconsistent with the purposes of the CLUP.

The following resolution language should be either be deleted, or amended:

WHEREAS, the ALUC found the proposed project to be consistent with the CLUP except for noise and height as described above; and

To;

WHEREAS, the project was proposed outside of all ALUC safety zones for SJC; and

Regarding draft resolution items D and E(4); The Envision San Jose 2040 General Plan adoption by the City, included a court order settlement agreement, accepted by the City and ALUC, that the San Jose International Land Use Plan (CLUP) would be modified to include no outdoor residential space within the 65 dBA noise contour or greater. The ALUC believes that allowing the project to move forward as proposed would be in violation of the settlement agreement.

Also, item E(4) States:

The Envision San José 2040 General Plan identifies outdoor noise environments of 60-75 dBA DNL as "conditionally acceptable" for residential and hotel uses, as long as interior

noise levels are mitigated to 45 dBA DNL. The residential outdoor activities areas at Downtown West Blocks E3 and C3 are located both in the environs of the Mineta San José International Airport and in Downtown. These areas are exempt from the 60 dBA DNL exterior noise limit the City applies in other residential areas.

The ALUC questions why are these areas exempt from the 60 dBA DNL noise limit? The CLUP does not have any exemption clauses for this area. Also, the City's General Plan and noise ordinance would reinforce the CLUP noise policies.

Item E(3) includes a statement regarding residents living with exterior noise and discussion of a property notice to those residents. The ALUC provides the City with a consistency determination to avoid the need for notices for unreasonable, adverse noise impacts. If the project were consistent with the SJC CLUP policies, there would be no need to use that notice.

The draft resolution includes many statements in Section 1 regarding project consistency with the City's General Plan. The ALUC notes that these are not relevant to the decision-making responsibility the ALUC, which is to provide a consistency determination with the policies of safety, height and noise.

Likewise, project consistency with the SJC Airport Master Plan is irrelevant and inaccurate in some cases, because the Airport Master Plan is an Airport operation document, not a surrounding land use document. The ALUC's responsibility for a project referral is to evaluate the project against the CLUP policies of safety height and noise, for which the project was found inconsistent with the height and noise policies.

Also, on January 13, 2021, the Federal Aviation Administration ("FAA") published, in the Federal Register, Vol. 86, No. 8, Docket No. FAA-2021-0037 a noise analysis of impacts to receptors adjacent to airports. The ALUC notes regarding noise that the document has direct applicability to the subject project and would be inconsistent with it.

The ALUC wishes to reiterate the following were the grounds under which the ALUC found the project Inconsistent at their December 16th, 2020 meeting:

The ALUC found the referral **Inconsistent** with the noise and height policies as defined in the San Jose International Airport Comprehensive Land Use Plan (SJC CLUP).

Table 4-1 of SJC CLUP states: "residential uses are "Generally Unacceptable" between the 65-70 dBA CNEL Noise Contours. New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design. Outdoor activities are likely to be adversely affected."

Policy N-4 of the SJC CLUP states: "No residential or transient lodging construction shall be permitted within the 65 dB CNEL contour boundary unless it can be demonstrated that the resulting interior sound levels will be less than 45 dB CNEL and there are no outdoor patios or outdoor activity areas associated with the residential portion of a mixed-use residential project or

a multi-unit residential project. (Sound wall noise mitigation measures are not effective in reducing noise generated by aircraft flying overhead.) “

The proposed General Plan Amendment and Rezoning would also allow building heights in conflict with FAA Part 77 Surfaces by using TERP surfaces to define future building heights. The ALUC uses FAA Part 77 Surfaces as a height restriction boundary.

The ALUC wished to point out that nobody from the City of San Jose was willing to engage in a dialogue with ALUC at the time of the referral.

The ALUC urges the City of San Jose, if they disagree with portions of the SJC CLUP, they should engage in the appropriate paths to try and amend the CLUP, rather than to Overrule ongoing inconsistencies.

Last, the timing of Overrule notification by the City of San Jose made it impossible for the ALUC to comment within the 30-day period. The Overrule was transmitted to the ALUC on February 19, 2021 at 3:33 PM. Which was prior to the February meeting, but 30 days would expire before the March 24th, 2121 regular meeting.

Please note that ALUC staff wishes to be noticed and included in the City Council action pursuant to the Public Resources Code 21670, which requires a 2/3 vote of the entire body of the City of San Jose City Council. Also, that the Cal Trans Division of Aeronautics comments shall also be included.

If you have any questions, please feel free to contact ALUC staff, Mark Connolly, at 408-299-5786, or via e-mail at mark.connolly@pln.sccgov.org.

Sincerely,



Mark J. Connolly
Senior Planner / ALUC Program Manager

Cc: John Tu; Supervising Planner, City of San Jose